MR. AND MRS. GERALD H. MURRAY

IBLA 89-30 Decided Decembeer 6, 1990

Appeal from a decision of the Phoenix Resource Area Manager, Phoenix District Office, Arizona, Bureau of Land Management, establishing the rental for an access road linear right-of-way A-21928.

Affirmed.

1. Appraisals--Federal Land Policy and Management Act of 1976: Rights-of-Way--Rights-of-Way: Appraisals--Rights-of-Way: Federal Land Policy and Management Act of 1976

Where BLM establishes the rental for an access road right-of-way granted under sec. 501(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1988), in accordance with the schedule adopted pursuant to 43 CFR 2803.1-2(c)(1), and appellant fails to demonstrate error, BLM's rental determination will be affirmed.

APPEARANCES: Gerald H. Murray, pro se.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Mr. and Mrs. Gerald H. Murray (appellants) have appealed from a decision of the Area Manager, Phoenix Resource Area, Bureau of Land Management (BLM), dated August 26, 1988, setting the rental for linear access road right-of-way A-21928 at $835 for the period May 30, 1986, through May 29, 1988. 1/

The right-of-way was issued to appellants effective May 30, 1986, pursuant to Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1761-1771 (1988). By the terms of the grant, they received the right to "construct, operate, maintain, and terminate a road on public lands" in Arizona. Specifically, the right-of-way authorized
use of an existing access road across public lands to appellants' property.

In its August 1988 decision, BLM explained that a new rental schedule had been developed based upon right-of-way regulations effective August 7,

1/ Gerald H. Murray has signed all correspondence with BLM, including the notice of appeal, in his name alone. It is presumed that he is representing the interests of his wife, Jean H. Murray.

1987. As noted above, BLM determined the rental to be $860 for the period May 30, 1986, through May 29, 1988. 2/

By letter dated September 15, 1988, BLM explained to appellants that Pinal County had filed an application for a Federal right-of-way, part of which had been granted to appellants in right-of-way grant A-21928. BLM stated that, should appellants relinquish their right-of-way, the county would be issued a grant for the road, which would become a county-maintained roadway and which would be rent free.

On September 22, 1988, appellants filed a letter agreeing to relinquish the right-of-way. In this letter, they also asked that BLM consider waiving or adjusting the rental that they had been charged for the right-of-way. BLM evidently informally denied this request, and on October 11, 1988, appellants filed a timely notice of appeal of the propriety of the rental determination.

Appellants' statement of reasons for appeal reads as follows:

> [We] would first like to clarify that [we are] not appealing the right-of-way, but the $835 rental charge for the right-of-way.
>
> As per [our] letter of October 5, 1988, [we] really [were] led to believe that the charge would be in the neighborhood of $75. Had [we] known that it would have been anywhere near the new amount, [we] most certainly would not have applied for the right-of-way.
>
> Also, [we] would ask that you take into consideration that [we] cooperated with you fully when you asked [us] to sign the necessary releases to relinquish the right-of-way as per your request.

[1] Section 501(a)(6) of FLPMA, 43 U.S.C. § 1761(a)(6) (1988), provides that the Secretary is authorized to grant a right-of-way over public lands for "roads." In addition, section 504(g) of FLPMA, 43 U.S.C. § 1764(g) (1988), requires that the holder of a FLPMA right-of-way "shall pay annually in advance the fair market value thereof as determined by the Secretary granting * * * such right-of-way." See Blue Mesa Road Ass'n, 89 IBLA 120, 127 (1985).

The initial rental charge of $25 was set by BLM during the time when Instruction Memorandum (IM) No. 84-490, Change 1, dated November 28, 1984, was in effect. That memorandum instructed all BLM offices to limit charges for new rights-of-way to a fixed rental, pending approval of regulations implementing a uniform system of appraisal for all types of linear rights- of-way:

2/ BLM actually billed appellants for $835, representing rental of $860 less the rental deposit of $25.

Accordingly, during the interim period while developing new regulations, * * * the following procedures are implemented.

1. Applicants for new rights-of-way should be charged the minimum rental of $25 for 5 years. The grant is to be made subject to a rental determination at a later date and the express covenant that any additional rental that is determined to be due as the result of the rental determination shall be paid upon request.

Both the right-of-way grant and BLM's letter of May 23, 1986, informing appellants that the right-of-way had been approved made it clear that the $25 rental was subject to review at a later date and that, if it was determined that additional rental was due, it had to be paid upon request. 3/ BLM did subsequently so determine.

BLM set the rent as provided by 43 CFR 2803.1-2(c)(1) based on its per-acre rental schedule for linear rights-of-way. This schedule was adopted following a study of rental rates and the formation of a standard policy determining fair market value. Notice of the applicability of the schedule was published in the Federal Register, along with implementing regulatory changes, and the schedule was made effective August 7, 1987. 52 FR 25818 (July 8, 1987).

A worksheet included in the case file shows that the rental was determined in accordance with the schedule as directed by 43 CFR 2803.1-2(c)(1). BLM calculated the rental in accordance with this schedule as it applied to Pinal County, Arizona. 4/ Appellants have not challenged the applicability of these regulations, and we perceive nothing showing that they should not

3/ Exhibit "B" attached to and made part of the grant specified as follows concerning rental:

"Rental. Our Washington Office has imposed a moratorium on rental determinations. While the moratorium is in effect, applicants for new rights-of-way will be charged the minimum rental of $25 for five years. This rental rate will be reviewed at a later date and any additional rental that is determined to be due as a result of the rental determination shall be paid upon request.

"BLM's letter of May 23, 1986, states, "Our Washington Office has imposed a moratorium on rental determinations for most rights-of-way.
While the moratorium is in effect, applicants for new rights-of-way will be charged the minimum rental of $25 for five years. The grant can be issued subject to a rental determination at a later date. A $25 rental deposit is required prior to issuance of grant."

4/ The worksheet established the rental at $1,131. BLM's Aug. 26, 1988, memorandum to the file explains why the rental was subsequently reduced. Although the rental due was $1,131 for the period from May 30, 1986, through Dec. 31, 1988, as noted above, Pinal County had had an application for a right-of-way on file with BLM since July 10, 1987, and it wished to have

apply. The allegation that there is error in the result reached by BLM is not enough, by itself, to establish that the decision was incorrect or that a different result should have been reached. Keith P. Carpenter, 112 IBLA 101, 102 (1989). Accordingly, BLM's decision is properly affirmed. Id.; Tucson Electric Power Co., 111 IBLA 69 (1989).

Appellants suggest that they were misinformed by BLM as to the amount of rental that would be due for their right-of-way. No proof that BLM provided such misadvice has been provided. However, even accepting this suggestion as true, appellants are not relieved of their burden of paying rental as required by Departmental regulations. It is well established
that reliance upon misinformation provided by an officer of BLM cannot create any rights not authorized by law, and that the Department is not bound to accept the terms of any arrangement or agreement to do what the law does not sanction or permit. 43 CFR 1810.3(b) and (c).

Finally, we are unable to see why appellants' willingness to relinquish their right-of-way would justify a reduction of the amount of the rental due. In fact, this decision benefitted appellants, as it meant that the right-of-way could be used rent free. In any event, the amount
of the rental is set in accordance with regulation and is not affected by considerations such as that described by appellants.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

David L. Hughes
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge

fn. 4 (continued)
appellant's right-of-way assigned to it. The memorandum recommended that the rent from May 31 through Dec. 31, 1988, be waived, concomitant with issuing the right-of-way to Pinal County effective May 31, 1988. As a result, the amount due was changed to $859.79 to reflect the rent for the shortened period from May 30, 1986, through May 30, 1988.